

NINETY-SECOND DAY.

SENATE CHAMBER.
Austin, May 4, 1874.

Senate met pursuant to adjournment. Roll called; quorum present.

Prayer by the chaplain.

The reading of the journal of Saturday was dispensed with.

Senator Erath introduced a bill entitled "An Act supplementary to 'an act making appropriations for the support of the State government for the fiscal year beginning September 1, 1874, and ending August 31, 1875.'" Bill read first time. Rules suspended, bill read second time and ordered engrossed.

On motion of Senator Dwyer, the rules were suspended, bill read third time and passed.

Senator Dillard introduced a bill entitled "An Act making an appropriation for extra clerical service in the State department." Read first time. Rules suspended, bill read second time and ordered engrossed. Rules further suspended, bill read third time and passed by the following vote:

YEAS—Senators Allison, Ball, Baker, Bradley, Burton, Davenport, Dillard, Dwyer, Erath, Friend, Hobby, Joseph, Ledbetter, Morris, Moore, Parker, Randle, Russell, Shepard, Stirman, Swift, Trolinger and Wood—23.

NAYS—Senators Bradshaw, Culberson, Ireland and Westfall—4.

A message was received from the Governor.

A message was received from the House, announcing the passage of House bill No. 532, "An Act authorizing counties, cities, or incorporated towns to establish quarantine ordinances, rules or regulations;" also, the passage of House bill No. 583, "An Act supplemental to an act entitled 'an act to incorporate the Orange and Bolivar Point Railroad Company, and aid in the construction of the same,'" passed at the first session of the Fourteenth Legislature.

Senator Shepard introduced a bill entitled "An Act to amend sections thirty-two and thirty-three of 'an act to establish and maintain a system of public free schools in the State of Texas,'" passed April 30, 1873. Read first time. Rules suspended and bill read second time.

Senator Wood offered the following amendment, at the end of section one: "Provided, that in no event shall the tax levied and collected under this act exceed, in any one year, the sum of one-fourth of one per cent. *ad valorem*." Adopted.

Senator Bradley moved to lay the bill on the table.

Carried by the following vote:

YEAS—Senators Allison, Baker, Bradshaw, Bradley, Burton, Culberson, Davenport, Hobby, Morris, Moore, Parker, Stirman, Swift and Trolinger—14.

NAYS—Senators Ball, Dillard, Erath, Friend, Ireland, Joseph, Ledbetter, Randle, Russell, Shepard and Wood—11.

A message was received from the House, announcing the passage of Senate bill No. 48, "An Act to fortify land titles."

Senator Allison presented the following protest, which was spread on the journals:

Protest of R. D. Allison in casting his vote on the General Appropriation Bill, May 2, 1874:

"Believing that several items in the General Appropriation Bill, for the fiscal year beginning September 1, 1874, and ending August 31, 1875, are unconstitutional, and believing that some others are exorbitant; but in view of the fact that the Government can't be carried on without some appropriation for that purpose, I therefore vote aye, but under protest as to the justice of the bill as a whole.

R. D. ALLISON.

On motion of Senator Allison, the rules were suspended and House substitute for Senate bill No. 262, "An Act to prevent the sale of poisonous, drugged or adulterated liquors," was taken up. Bill read first time.

Senator Allison moved that the rules be suspended to put the bill on its second reading. Lost.

On motion of Senator Joseph, the rules were suspended and House bill No. 533 was taken up, "An Act supplemental to an act entitled 'an act to incorporate the Orange and Bolivar Point Railroad Company, and aid in the construction of the same,'" passed at the first session of the Fourteenth Legislature. Bill read first time. Rules suspended, bill read second time and passed to third reading. Rules further suspended, bill read third time and passed.

A message was received from the House, announcing the passage of House Joint Resolution No. 22, "To repair portraits of Washington, Houston, Austin and Burleson."

Senator Ireland called up the Joint Resolution thus announced. Read first time. Rules suspended, resolution read second time and passed to third reading. Rules suspended, resolution read third time, and passed by the following vote:

YEAS—Senators Ball, Baker, Burton, Culberson, Davenport, Dillard, Dwyer, Erath, Friend, Hobby, Ireland, Joseph, Ledbetter, Morris, Moore, Parker, Randle, Russell, Shepard, Swift, Trolinger and Wood—22.

NAYS—Senator Allison—1.

On motion of Senator Swift, the rules were suspended and House bill No. 530, "An Act to amend section one of an act supplemental to an act amendatory of an act entitled 'an act to encourage stock raising, and for the protection of stock raisers,'" approved May 1, 1874, was taken up and read first time. Rules suspended, bill read second time and passed to third reading. Rules further suspended, bill read third time and passed.

By leave, Senator Ball introduced a bill entitled "An Act to appropriate the sum of three hundred and twenty-five (\$325) dollars for the pay of clerks employed in the office of the Superintendent of Public Instruction, from the sixteenth February, 1874, to the first day of March, 1874." Bill read first time.

On motion of Senator Culberson, the bill was laid on the table, by the following vote:

YEAS—Senators Baker, Bradley, Burton, Culberson, Davenport, Friend, Hobby, Ireland, Morris, Moore, Parker, Russell, Stirman and Swift—14.

NAYS—Senators Ball, Dwyer, Erath, Joseph, Ledbetter, Randle, Shepard, Trolinger and Wood—9.

Senator Ball offered the following correction to the Senate Journals of Saturday:

"Correct the Journals by inserting in the deficiency bill the following words: 'That clerks of all the departments employed from the fifteenth day of February, A. D. 1874, be paid out of the appropriations in this bill.'" The correction was adopted.

On motion of Senator Friend, the rules were suspended and House bill No. 532 was taken up, "An Act authorizing counties, cities, or incorporated towns to establish quaran-

tine ordinances, rules or regulations." Bill read first time. Rules suspended, bill read second time and passed to third reading. Rules suspended, bill read third time and passed.

Senator Ledbetter offered the following resolution:

Resolved, That the thanks of the Senate are hereby extended to Hon. R. B. Hubbard, President thereof, for his uniform courtesy and urbanity, and for the ability, justice and sound judgment that have characterized his course as such presiding officer. Adopted.

On motion of Senator Allison, the rules were suspended, and Senate bill, No. 409, was taken up, "An act, entitled an act to authorize the Secretary of State to furnish stationery and all necessary supplies in the Departments for the Executive, Legislative, and all the Departments of the Government." Bill read second time and ordered engrossed. Rules suspended, bill read third time and passed, by the following vote:

YEAS—Senators Allison, Ball, Baker, Bradley, Burton, Davenport, Dillard, Dwyer, Friend, Hobby, Ireland, Joseph, Morris, Moore, Parker, Russell, Shepard, Stirman, Trolinger and Wood—20.

NAYS—Senators Culberson and Westfall—2.

On motion of Senator Parker, the Message of the Governor was taken up and read.

The Message was as follows:

EXECUTIVE OFFICE, STATE OF TEXAS,)
May 4th, 1874.)

To the Hon. Senate of the State of Texas:

I return herewith, without my approval, Senate bill, No. 371, being "An act declaring an act to incorporate the City of San Antonio, and grant a new charter to said city, and to repeal an act entitled an act to incorporate the City of San Antonio, approved July 17, 1856, an act to incorporate the City of San Antonio, approved February 11, 1860, and an act to incorporate the City of San Antonio, and grant a new charter to said city," approved August 13, 1870, one of the unpublished special laws of the Thirteenth Legislature.

My objection to this bill is, that it is an unconstitutional exercise by the Legislature of judicial functions.

Section one, of article two, of the Constitution, expressly forbids the Legislature to perform judicial acts. The Fourteenth Legislature may enact what shall be law from this.

time on, but have not the power to decide, what acts of the Thirteenth Legislature, are and what are not law. In dividing the powers of the Government, the Constitution has devolved the decisions of these questions upon the Judiciary, and this bill is an invasion of the rights of that department of the government.

I respectfully ask a reconsideration of the bill.

Very respectfully,

RICH'D COKE.

The question being, "shall the bill pass, notwithstanding the objections of the Governor," the Senate refused to pass the bill, by the following vote :

YEAS—Senators Hobby and Ledbetter—2.

NAYS—Senators Allison, Ball, Baker, Bradley, Burton, Culberson, Davenport, Dillard, Dwyer, Friend, Joseph, Morris, Moore, Parker, Russell, Shepard, Stirman, Trolinger, Westfall and Wood—20.

Senator Ireland offered the following resolution :

Resolved, That the pending address against Judge Burnett, be continued over to the next session of the Legislature. Adopted.

Senator Erath, Chairman Committee on Private Land Claims, submitted the following report :

Hon. R. B. Hubbard, President of the Senate :

The undersigned returns to the Senate the following bills and petitions not acted on, on account of evidence to sustain the claims and want of time.

G. B. ERATH, Chairman.

Senate bill, No. 398, petition of Catharine Wade ; Senate bill, No. 337, petition of T. Hart ; Senate bill, No. 407, petition of M. M. Mitchell ; Senate bill, No. 369, petition of L. W. Wybrant ; Senate bill, No. 399, petition of T. L. Holmes ; Senate bill, No. 264, petition of L. A. D. Wells ; Senate bill, No. 290, petition of T. L. Holmes ; Senate bill, No. 373, petition of J. W. Bloendale ; Senate bill, No. 28, petition of John Lucas ; Senate bill, No. 324, petition of Collet Burnet ; Senate bill, No. 374, petition of Waltham L. Holmes, cited on bill for E. Harrell.

Senator Westfall, for Committee on Enrolled Bills, submitted the following reports :

Hon. R. B. Hubbard, President of the Senate :

Your Committee on Enrolled Bills, ask leave to report that they have carefully examined Senate Bill No. 367.

"An act to make appropriations for the support of the State government, for the fiscal year, beginning September 1, 1874, and ending August 31, 1875, and find the same correctly enrolled, and have this fourth day of May, 1874, at 9:30 o'clock A. M., presented said bill to the Governor for his approval. W. H. WESTFALL, for Committee.

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Enrolled Bills have carefully examined the following bills to-wit: Senate bill, No. 244, "An act to authorize Justices of the Peace to hold regular terms of their courts at such places in their precincts as may suit the wants of the people." Senate bill, No. 425, "An Act to provide for the traveling and other contingent expenses of the Quartermaster and Commissary of the Frontier Battalion." Senate substitute for House bill, No. 182, "An Act to lease to the use of Travis county, certain lands in the city of Austin, on which to erect a courthouse and jail, and to enable said county to build the same." Senate bill, No. 433, "An Act to prevent frauds upon the State." Substitute Senate bill, No. 242, "An Act to provide for the removal from office of District Attorneys, Sheriffs, District Clerks and other officers, and for filling vacancies in such offices." Senate bill, No. 413, "An Act making an appropriation to pay the interest on the bonded indebtedness of the State and the interest on State Treasury warrants;" and Senate bill, No. . . ., "to make an appropriation for the Supreme Court at Galveston, Tyler and Austin." Senate bill, No. 350, "An Act to amend the twenty-eighth section of an act entitled an act prescribing the times of holding the District Courts in the several Judicial Districts, approved August 10, 1870;" also Senate bill, No. 158, "providing for the condemnation and sale of damaged and useless arms, equipments and ammunitions, belonging to the State," and find the same correctly enrolled, and have this the fourth day of May, at 9 o'clock A. M., presented the same to the Governor for his approval. W. H. WESTFALL, for Committee.

The President appointed Senators Joseph, Dillard and Ball, as a Committee to wait on his Excellency the Governor, and inform him that the Senate would adjourn *sine die*, at 12 M.

On motion of Senator Erath, the Senate took a recess until 11:30.

At the expiration of the recess, the Senate was called to order.

Senator Joseph, chairman of the committee appointed to wait on his Excellency, informed the Senate, that the Committee had discharged its duty; and that the Governor stated, that he tendered his congratulations for the kindness and courtesy extended to him by the Honorable Senators, and wished for them long life, prosperity, etc., etc.; and that he had no further business to communicate to the Senate.

The report of the Committee was adopted.

A message was received from the Governor. The message was as follows:

EXECUTIVE OFFICE, STATE OF TEXAS,)
Austin, May 4, 1874.)

To the Honorable Senate of the State of Texas:

GENTLEMEN—I respectfully ask your advice and consent to the following appointment, to-wit: N. W. Battle, of McLennan county, to be Judge of the Criminal Court for the cities of Waco and Marlin.

Very Respectfully,

RICH'D COKE.

On motion of Senator Parker, the Senate went into Executive session.

IN SENATE.

The Secretary of the Senate was instructed to inform his Excellency the Governor, that the Senate does advise and consent to the appointment of N. W. Battle, to be Judge of the Criminal Court, for the cities of Waco and Marlin.

A message was received from the House, announcing the passage of Senate bill, No. 442, "An Act making an appropriation for extra clerical service in the State Department; also, that the House concurs in Senate amendment to the Journals, relative to payment of clerks."

Senator Westfall, for Committee on Enrolled Bills submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Enrolled Bills, have carefully examined Senate bill, No. 441, "An Act supplemental to an act to make appropriations for the support of the State government for the fiscal year beginning September 1, 1874.

and ending August 31, 1875," and find it correctly enrolled, and have this the fourth day of May, at 11:15 o'clock, presented same to the Governor for his approval.

W. H. WESTFALL, for Committee.

Senator Dillard offered the following resolutions :

Resolved, That, is hereby authorized to correct, index, and superintend the printing of the Journals of the Senate, and that he be allowed sixty days within which to perform said labor, and that he be allowed the sum of two hundred and forty dollars, (\$240), as compensation for his labor, to be paid upon the completion of said service, out of the contingent fund of the State.

Senator Swift moved to amend the blank by inserting "the Secretary of the Senate." Adopted.

Senator Joseph offered the following amendment :

"And that he be required to furnish a copy of the Journals of each House, and special laws of each to the Senators. Adopted.

Senator Friend offered the following amendment :

"And to index and file with the Secretary of State the unfinished business of the Senate." Adopted.

Secretary Wood offered the following amendment :

"And that the Secretary of the Senate be authorized to draw a sufficient amount out of the contingent fund of the Senate, to pay postage on the matter required to be forwarded Senators." Adopted.

The resolution as amended, was then adopted.

The President of the Senate then addressed the Senate as follows :

Address of Hon. R. B. Hubbard, President of the Senate, at the close of the session of the Fourteenth Legislature :

SENATORS OF TEXAS—The hour of adjournment of the first session of the Fourteenth Legislature has arrived. With the conviction that you have earnestly and conscientiously discharged your duties to your immediate constituents and the State at large, I congratulate Senators on the happy reunion which awaits them at the threshold of home, and the kindly greeting which a generous people *always* extends to the honest public servant.

That error has marked *some* of the counsels of the State, may be true, but that a broad and liberal spirit, comprehending the duties of the hour and the demands of a great Commonwealth, has characterized your body and

the entire Legislature will, in due time, be accorded by your fellow-citizens. You have redeemed the pledges of the canvass (which was crowned by so great a civic triumph), in the enactment of wholesome laws relating to our embarrassed finances; our public free schools; the protection of our exposed frontiers; the encouragement of immigration, and by the inauguration of retrenchment and reform in all the departments of the government; and yet you have not forgotten, though depleted in purse and sorrowing over bitter wrongs, to cheer the old soldiers of our early Republic with an honest and an honorable pension on our bounty. Your policy in relation to the development of our great material resources, by continued encouragement of a wise and cautious system of internal improvements, which in a few more years, with iron arms must bind all sections of our vast territory in a common brotherhood of interest and feeling, will meet with the endorsement of that enterprise and patriotism so nobly illustrating our present history. At the same time, you have guarded against monopolies; inviting capital to develop our resources, and not to fetter the limbs of labor. To the laws which you have enacted, and those you have blotted from our statutes, you can point without fear and challenge the just criticism of your countrymen. To the faithfulness and unselfish devotion which you have exhibited in these halls in the arduous public service, your presiding officer testifies with earnest and with honest pride. We go hence to give an account of our stewardship. May you meet with the response from the *hearts* and the *judgments* of the People—"well done, good and faithful servants!"

For the generous support which you have always extended me officially, and for the personal friendships which bind me to every Senator and officer of this body, I thank you from a heart full of gratitude. Some of us may not meet again in the councils of the State, and perchance, some of us, never more may meet in the thronging pathways of life, but whatever may be our fortunes, we shall all together—irrespective of party creeds or sectional lines—living or dying, cherish a common devotion to the honor and glory of our beloved Texas.

I now declare the First Session of the Fourteenth Legislature adjourned *sine die*.